IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/04/2003

CORAM

THE HON'BLE MR.B.SUBHASHAN REDDY, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE C.NAGAPPAN

W.A.No.3726 of 2002
and
W.A.M.P.No.6242 of 2002

PICNIC PARK HOTEL PVT. LTD.,
Rep. by Mr.N.Devendra Kumar Gupta,
No.1132, Poonamallee High Road,
Chennai - 600 003. ..... Petitioner

-Vs-

1. Picnic Hotel Private Ltd.,
No.1132/1, Poonamallee High Road,
Chennai - 3.
Rep. by its Director Rajendra Gupta.
2. State of Tamil Nadu,
rep. by its Secretary to Government,
Prohibition & Excise Department,
Secretariat, Chennai - 600 009.
3. The Commissioner of Prohibition & Excise,
Chepauk, Chennai - 600 005.
4. N.D.Gupta,
1132, Poonamallee High Road,
Chennai - 600 003.
5. Devendra Kumar Gupta,
1132, Poonamallee High Road,
Chennai - 3.
6. Sanjay Gupta,
No.2, R.K.Mutt Road,
Mylapore, Chennai - 4. ..... Respondents.

PRAYER: Appeal against the order of the learned single Judge dated 28.11.2002, passed in W.P.22503 of 2002, as stated therein.

!For Appellant : Mr.R.Subramanian

^For Respondent-1:Mr.T.R.Rajagopalan, Senior Counselfor M/s.R.Parthasarathy

:J U D G M E N T

The Hon'ble The Chief Justice

This writ appeal is directed against the order of the learned single Judge in allowing the writ petition filed by the first respondent herein, and setting aside the order of the 3rd respondent herein i.e., the Commissioner of Prohibition and Excise, Chepauk, Chennai-5. The 3 rd respondent had passed an order dated 20.6.2002, in Proc.Rc.P&E.II(4)7154/99, granting licence to run a bar in favour of the appellant herein. The appellant is the Picnic Park Hotel Pvt. Limited, represented by Mr.Devendra Kumar Gupta, while the contesting respondent is the Picnic Hotel Private Limited, the 1st respondent herein, represented by Mr.Rajendra Gupta.

2. Mr.Devendra Kumar Gupta and Mr.Sanjay Gupta, 5th and 6th respondents, herein, as also Mr.Rajendra Gupta, the first respondent-writ petitioner, and one Mr.Ashoka Gupta, who is not a party herein, are the sons of Mr.N.D.Gupta, the 4th respondent herein. They jointly owned properties and business concerns, and disputes arose among them which led to discussions, mediations, etc., and then a memorandum of understanding dated 24.5.1998 was executed, earmarking the business among the parties, in which Mr.Rajendra Gupta and Mr.Ashoka Gupta, were mentioned as first group, while their brothers Mr.Devendra Kumar Gupta, Mr.Sajnjay Gupta and father Mr.N.D.Gupta were referred to as second group. For the purpose of clarity, we also refer them as first and second group. The first group was allotted Picnic Hotel Private Limited consisting of 70 rooms, bar/permit room, and marriage hall situated in the rear side of the premises bearing No.1132, Poonamallee High Road, Chennai - 600 003, which was later renumbered as 1132/1. The second group was allotted the front portion of the p remises at No.1132, Poonamallee High Road, Chennai - 600 003, with rights to run Picnic Park Hotel Private Limited, which is the appellant herein. For the purpose of developing the properties, loans were raised from the financial institution called TIIC, and as on the date of memorandum of understanding the outstanding payable to TIIC was Rs.1,90,00,000/-, and that liability was fastened on Group-1. In spite of the memorandum of understanding, stated supra, mis-understandings still persisted among the parties, as the 2nd Group obtained a permit to run a bar, which led to the filing of O.A.No.190 of 1999, on the file of this Court, invoking Section 9 of the Arbitration and Conciliation Act, 1996, by the 1 st Group, seeking to injunct the 2nd Group from running a bar on the premises bearing No.1132, Poonamallee High Road, Chennai or at any other place/places. By order dated 7.6.1999, a learned single Judge of this Court issued injunction, but imposed a condition on the 1st Group to clear all the arrears to TIIC, within two weeks from the date of order, and also imposed a default clause stating that if the said condition was not complied with within the said period, the 1st group is not entitled to the injunction, and the O.A.No.190 of 1999 shall stand dismissed, and the interim injunction shall stand vacated.

3. The 2nd Group, which is led by the appellant herein, thereafter filed an application before the Commissioner of Prohibition and Excise seeking a licence to run a bar, on the ground of default by the 1st Group in clearing

the loan arrears to TIIC. The Commissioner had acceded to the said plea, and granted a licence to run a bar, to the appellant herein, vide his proceedings in Proc.Rc.P&E.II(4)7154/99 dated 20.6.2002, which was assailed before the learned single Judge, by the 1st Group led by the 1st respondent herein.

4. The learned single Judge, before whom the contentions were advanced by either side, had come to the conclusion that the Commissioner of Prohibition and Excise had mis-directed himself in unilaterally assuming that the default clause set by the learned single Judge in his order dated 7.6.1999 in O.A.No.190 of 1999 had come into force.

5. Mr.R.Subramaniam, learned counsel appearing for the appellant/3 rd respondent/2nd Group strenuously contends that even on the date of hearing of the writ appeal, the dues payable by the 1st Group to TIIC were outstanding, and as such there was no fallacy committed by the Commissioner of Prohibition and Excise in granting Bar licence in Form FL-3.
6. Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the 1st respondent/writ petitioner/1st Group counters the said contention by arguing that it was fallacious on the part of the Commissioner in unilaterally assuming that the injunction got vacated, because of the default by the 1st Group in clearing the dues to TIIC, and that in fact, the liability inter se the 1st Group and the TIIC has got no bearing on the issuance of the Bar licence, and that the 1st Group struck on understanding with TIIC and got the loan repayments re-scheduled.

7. The learned single Judge has comprehensively dealt with the matter by going into each of the fact situation and the contentions raised by either party, including the relevant clauses of memorandum of settlement, as also the orders passed by the learned single Judge, and more particularly, pointing out

the effect of Clause-20 of the Memorandum of Understanding, as interpreted and ruled by a Division Bench of this Court, in O.S.A.Nos.83 to 86 of 1999, dated 11.11.1999, preferred against the orders in O.A.Nos.190, 198, and 200 of 1999.

8. If the order of the learned single Judge granting a conditional injunction in O.A.No.190 of 1999 is read in isolation, then the interpretation of the Commissioner of Prohibition and Excise, which is contended by Mr.R.Subramaniam, the learned counsel for the appellant, is correct. But, that is not the situation. The order of the learned single Judge in O.A.No.190 of 1999 has to be read with the order of the Division Bench, as the order of the learned single Judge has got merged in the order of the Division Bench. Clause -20 of the Memorandum of Understanding places an embargo on the appellant-2nd Group from starting any business of serving alcoholic beverages, either by opening a bar or any permit room for the said purpose. The order of the learned single Judge in O.A.No.190 of 1999, no doubt makes the 1st Group to pay arrears of loan to TIIC, by stipulating a time, and also a default clause stating that injunction granted against the 2nd group stands vacated if the arrears due to TIIC are not paid within the stipulated time. But, the same was modified by the Division bench in O.S.A.Nos.82 to 86 of 1999, by its judgment dated 11.11.1999. From a bare reading of the Judgment of the Division Bench, it is clear that the restraint on the 2nd Group from opening

the bar was absolute, by interpreting clause 20 of the Memorandum of Understanding to that effect. The result is that the injunction, which was granted in O.A.No.190 of 1999, continued to be in operation dehors the liability of the 1st Group to TIIC and the loan transaction was entirely inter se, the 1st Group and the TIIC, in which the 2 nd Group had no part to play. To make things clear, the Judgment of the Division Bench is that the embargo placed on the 2nd Group from running a bar or permit room was absolute, and not dependant upon the discharge of the loan by the 1st Group. It is not the case of the 2nd Group led by the appellant that it has discharged any liability fastened on the 1st Group, either. In the circumstances, we do not see any infirmity, legal or otherwise, in the order of the learned single Judge, rendered in W.P.No.22503 of 2002, and consequently, we dismiss the writ appeal. No costs. Consequently, connected W.A.M.P. is also dismissed.

Index:Yes

Internet:Yes
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Copy to
1. State of Tamil Nadu,
rep. by its Secretary to Government,
Prohibition & Excise Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Prohibition & Excise,
Chepauk, Chennai - 600 005.

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